

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DAO HEALTH,

Plaintiff and Counter-Defendant,

vs.

CHIARO TECHNOLOGY LIMITED,

Defendant and Counter-Claimant.

Case No. 2:23-cv-00289

PATENT CASE

JURY TRIAL DEMANDED

**DAO HEALTH'S ANSWER TO
CHIARO TECHNOLOGY LIMITED'S COUNTERCLAIMS**

Plaintiff and Counter-Defendant Dao Health ("Dao Health"), by and through the undersigned counsel, hereby Answers Defendant and Counter-Plaintiff Chiaro Technology Limited's ("Chiaro" or "Elvie") Counterclaims. Each of the paragraphs below correspond to the same-numbered paragraphs in the Counterclaims. Dao Health denies all allegations in the Counterclaims, whether express or implied, that are not specifically admitted below. The headings used below are for convenience only and are not to be construed as admissions of any fact. Dao Health reserves the right to raise additional defenses based on discovery and further factual developments in this case. Dao Health states as follows:

THE PARTIES

1. Dao Health admits that Elvie purports to be a company incorporated under the laws of England and Wales and located at 63-66 Hatton Garden, Second Floor, London, EC1N 8LE, United Kingdom.

2. Dao Health admits the allegations in Paragraph 2 of the Counterclaims.

JURISDICTION AND VENUE

3. Paragraph 3 of the Counterclaims contains legal conclusions to which no response is required. To the extent a response is required, Dao Health admits that this Court has subject-matter jurisdiction for the purposes of resolving Elvie's Counterclaims seeking declarations of non-infringement and invalidity of United States Patent Nos. 7,559,915 ("the '915 Patent") and 8,118,772 ("the '772 Patent").

4. Paragraph 4 of the Counterclaims contains legal conclusions to which no response is required. To the extent a response is required, Dao Health admits that it does not contest this Court's jurisdiction over Dao Health for the purposes of resolving Elvie's Counterclaims seeking declarations of non-infringement and invalidity of the '915 and '772 Patents.

5. Paragraph 5 of the Counterclaims contains legal conclusions to which no response is required. To the extent a response is required, Dao Health admits that venue is proper in this judicial district for the Court's resolution of Elvie's Counterclaims seeking declarations of non-infringement and invalidity of the '915 and '772 Patents.

FACTUAL BACKGROUND

6. Dao Health admits that, on information and belief, Tania Boler is a co-founder of Elvie. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 6 of the Counterclaims, and therefore denies them.

7. Dao Health admits that, on information and belief, the Elvie Pump launched in 2018 and the Elvie Stride launched in 2021. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 7 of the Counterclaims, and therefore denies them.

8. Dao Health admits that, on information and belief, Elvie was referenced in an article published by TechCityUK and The Sunday Times. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 8 of the Counterclaims, and therefore denies them.

9. Dao Health denies the allegations in Paragraph 9 of the Counterclaims.

10. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Counterclaims, and therefore denies them.

11. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Counterclaims, and therefore denies them.

12. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Counterclaims, and therefore denies them.

13. Dao Health admits that, on information and belief, the Elvie Pump launched in 2018 and the Elvie Stride launched in 2021. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 13 of the Counterclaims, and therefore denies them.

14. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Counterclaims, and therefore denies them.

15. Dao Health admits that, on information and belief, the Elvie Pump launched in September 2018. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 15 of the Counterclaims, and therefore denies them.

16. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Counterclaims, and therefore denies them.

17. Dao Health admits that, on information and belief, the Elvie Pump was referenced in Core77 Design Awards 2019. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 17 of the Counterclaims, and therefore denies them.

18. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Counterclaims, and therefore denies them.

19. Dao Health admits that, on information and belief, the Elvie Pump was referenced in an article published by Core77 Design Awards, Time, Dezeen, Forbes, and European Centre. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 19 of the Counterclaims, and therefore denies them.

20. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Counterclaims, and therefore denies them.

21. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Counterclaims, and therefore denies them.

22. Dao Health admits that, on information and belief, the Elvie Stride launched in September 2021. Dao Health also admits the Elvie Stride was referenced in an article published by femtechinsider.com. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 22 of the Counterclaims, and therefore denies them.

23. Dao Health admits that, on information and belief, the Elvie Stride was referenced in an article published by Time and Dezeen. Dao Health lacks knowledge or information sufficient

to form a belief as to the truth of the remainder of the allegations contained in Paragraph 23 of the Counterclaims, and therefore denies them.

24. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Counterclaims, and therefore denies them.

25. Dao Health admits the Freemie Breast Milk Collection System was launched in 2009. Dao Health also admits the Freemie Breast Milk Collection System is wearable. Dao Health denies the remainder of the allegations in Paragraph 25 of the Counterclaims.

26. Dao Health denies the allegations in Paragraph 26 of the Counterclaims.

27. Dao Health admits that it is the owner and assignee of the '915 Patent, titled "Breast Pump Device With Self-Contained Breast Milk Reservoir," which issued on July 14, 2009. Dao Health denies the remainder of the allegations in Paragraph 27 of the Counterclaims.

28. Dao Health admits the '915 Patent relates to Dao Health's breast pump technology. Dao Health denies the remainder of the allegations in Paragraph 28 of the Counterclaims.

29. Dao Health admits the allegations in Paragraph 29 of the Counterclaims.

30. Dao Health denies the allegations in Paragraph 30 of the Counterclaims.

31. Dao Health denies the allegations in Paragraph 31 of the Counterclaims.

32. Dao Health admits that it is the owner and assignee of the '772 Patent, titled "Breast Pump Device With Self-Contained Breast Milk Reservoir," which issued on February 21, 2012. Dao Health denies the remainder of the allegations in Paragraph 32 of the Counterclaims.

33. Dao Health admits the '772 Patent relates to Dao Health's breast pump technology. Dao Health denies the remainder of the allegations in Paragraph 33 of the Counterclaims.

34. Dao Health admits the allegations in Paragraph 34 of the Counterclaims.

35. Dao Health denies the allegations in Paragraph 35 of the Counterclaims.

36. Dao Health admits it introduced the Freemie Breast Milk Collection System in 2009. Dao Health denies the remainder of the allegations in Paragraph 36 of the Counterclaims.

37. Dao Health denies the allegations in Paragraph 37 of the Counterclaims.

38. Dao Health admits that, on information and belief, Elvie designed and launched the Elvie Pump years after Dao Health had launched the Freemie Breast Milk Collection System. Dao Health lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 38 of the Counterclaims, and therefore denies them.

39. Dao Health denies the allegations in Paragraph 39 of the Counterclaims.

40. Dao Health denies the allegations in Paragraph 40 of the Counterclaims.

41. Dao Health admits that Dao Health's Complaint (Dkt. 1) alleges that Elvie infringes Dao Health's '915 and '772 Patents. Dao Health denies the remainder of the allegations in Paragraph 41 of the Counterclaims.

42. Dao Health admits that Dao Health's Complaint (Dkt. 1) alleges that Elvie infringes the '915 and '772 Patents and that Elvie has long been aware of the Asserted Patents. Dao Health denies the remainder of the allegations in Paragraph 42 of the Counterclaims.

43. Dao Health denies the allegations in Paragraph 43 of the Counterclaims.

COUNT ONE
(DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '915 PATENT)

44. Paragraph 44 purports to reallege and incorporate by reference the allegations contained in Paragraphs 1-43 of the Counterclaims. Dao Health incorporates by reference its answers to those paragraphs and otherwise denies the allegations of Paragraph 44 of the Counterclaims in all respects.

45. Dao Health denies the allegations in Paragraph 45 of the Counterclaims.

46. Paragraph 46 of the Counterclaims contains legal conclusions to which no response is required. To the extent a response is required, Dao Health admits that Dao Health has brought suit against Elvie alleging that Elvie infringes the '915 Patent. Dao Health also admits that Elvie's Counterclaim purports to seek a declaration of non-infringement of the '915 Patent. Dao Health denies the remainder of the allegations in Paragraph 46 of the Counterclaims.

47. Dao Health denies the allegations in Paragraph 47 of the Counterclaims.

48. Dao Health denies the allegations in Paragraph 48 of the Counterclaims.

COUNT TWO
(DECLARATORY JUDGMENT OF INVALIDITY OF THE '915 PATENT)

49. Paragraph 49 purports to reallege and incorporate by reference the allegations contained in Paragraphs 1-48 of the Counterclaims. Dao Health incorporates by reference its answers to those paragraphs and otherwise denies the allegations of Paragraph 49 of the Counterclaims in all respects.

50. Dao Health denies the allegations in Paragraph 50 of the Counterclaims.

51. Paragraph 51 of the Counterclaims contains legal conclusions to which no response is required. To the extent a response is required, Dao Health admits that Dao Health has brought suit against Elvie alleging that Elvie infringes the '915 Patent. Dao Health also admits that Elvie's Counterclaim purports to seek a declaration of invalidity of the '915 Patent. Dao Health denies the remainder of the allegations in Paragraph 51 of the Counterclaims.

52. Dao Health denies the allegations in Paragraph 52 of the Counterclaims.

53. Dao Health denies the allegations in Paragraph 53 of the Counterclaims.

COUNT THREE
(DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '772 PATENT)

54. Paragraph 54 purports to reallege and incorporate by reference the allegations contained in Paragraphs 1-53 of the Counterclaims. Dao Health incorporates by reference its answers to those paragraphs and otherwise denies the allegations of Paragraph 54 of the Counterclaims in all respects.

55. Dao Health denies the allegations in Paragraph 55 of the Counterclaims.

56. Paragraph 56 of the Counterclaims contains legal conclusions to which no response is required. To the extent a response is required, Dao Health admits that Dao Health has brought suit against Elvie alleging that Elvie infringes the '772 Patent. Dao Health also admits that Elvie's Counterclaim purports to seek a declaration of non-infringement of the '772 Patent. Dao Health denies the remainder of the allegations in Paragraph 56 of the Counterclaims.

57. Dao Health denies the allegations in Paragraph 57 of the Counterclaims.

58. Dao Health denies the allegations in Paragraph 58 of the Counterclaims.

COUNT FOUR
(DECLARATORY JUDGMENT OF INVALIDITY OF THE '772 PATENT)

59. Paragraph 59 purports to reallege and incorporate by reference the allegations contained in Paragraphs 1-58 of the Counterclaims. Dao Health incorporates by reference its answers to those paragraphs and otherwise denies the allegations of Paragraph 59 of the Counterclaims in all respects.

60. Dao Health denies the allegations in Paragraph 60 of the Counterclaims.

61. Paragraph 61 of the Counterclaims contains legal conclusions to which no response is required. To the extent a response is required, Dao Health admits that Dao Health has brought suit against Elvie alleging that Elvie infringes the '772 Patent. Dao Health also admits that Elvie's

Counterclaim purports to seek a declaration of invalidity of the '772 Patent. Dao Health denies the remainder of the allegations in Paragraph 61 of the Counterclaims.

62. Dao Health denies the allegations in Paragraph 62 of the Counterclaims.

63. Dao Health denies the allegations in Paragraph 63 of the Counterclaims.

ELVIE'S PRAYER FOR RELIEF

Dao Health denies the allegations set forth in Elvie's Prayer for Relief. Dao Health further denies that Elvie is entitled to any relief whatsoever, including any of the relief sought in Paragraphs A–C of Elvie's Prayer for Relief. Elvie's Prayer for Relief should be denied in its entirety and with prejudice, and Elvie should take nothing.

ELVIE'S DEMAND FOR JUR TRIAL

Dao Health admits that Elvie "requests a trial by jury of all issues properly triable by jury in this action."

DAO HEALTH'S DEFENSES TO ELVIE'S COUNTERCLAIMS

Failure to State a Claim

64. The Counterclaims fail to state a claim upon which a declaratory judgment of non-infringement or invalidity can be granted.

Waiver

65. Elvie has waived the right, if any, to pursue its claims by reason of its own actions and course of conduct, including but not limited to the doctrines of waiver, laches, estoppel and unclean hands.

Infringement

66. Elvie has infringed and continues to infringe the '915 and '772 Patents as described in Dao Health's Complaint for Patent Infringement (Dkt. 1).

67. Elvie has been and is inducing infringement of the '915 and '772 Patents as described in Dao Health's Complaint for Patent Infringement (Dkt. 1).

Validity

68. The '915 and '772 Patents are not invalid.

DATED: October 10, 2023

Respectfully submitted,

By: /s/ Meng Xi

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Attorneys for Plaintiff Dao Health

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2023, all counsel of record who are deemed to have consented to electronic service are being served with a true and correct copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Meng Xi
Meng Xi